FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 534/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 7, 2007.

Heard Shri Kadukar for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff who was the owner of one Rahul Krushi Kendra, for recovery of an amount of Rs. 32,693/- with interest thereon, towards the unpaid price of the goods purchased by the defendant/appellant from Rahul Krushi Kendra.

The defendant/appellant filed the written statement and denied the claim of the plaintiff. It was pleaded by the defendant that one Sheikh Dastgir had purchased cotton from the defendant and instead of paying the price thereof to the defendant, he paid an amount of Rs. 26,000/- to the brother of the plaintiff by name Ishwar Ragit who was also the owner of one Ragit Krushi Kendra.

The case of the plaintiff was not totally accepted by the trial Court and the trial Court decreed the suit to the extent of Rs. 650/- only. The

trial Court accepted the plea of the defendant that Sheikh Dastgir had paid an amount of Rs. 26,000/- to the brother of the plaintiff on 20/2/1998.

The appellate Court, however, reversed the findings recorded by the trial Court, and held that the cheque issued by Sheikh Dastgir on 20/2/1998 was dishonoured and the amount of Rs. 26,000/- was not actually received by the plaintiff or his brother Ishwar Ragit. In view of the aforesaid finding, the appellate Court decreed the suit filed by the plaintiff in its entirety and allowed the appeal filed by the plaintiff.

Perusal of the judgment passed by the appellate Court shows that the appellate Court has considered the entire oral and documentary evidence on record, to record the finding of fact that an amount of Rs. 32,693/- was due and payable by the defendant to the plaintiff and the defendant failed to prove that either the plaintiff or his brother had received Rs. 26,000/- from Sheikh Dastgir towards the unpaid bill payable by the defendant. A perusal of the cross-examination of Sheikh Dastgir clearly shows that the plaintiff had lodged criminal prosecution against Sheikh Dastgir in respect of dishonour of two cheques and Sheikh Dastgir had also admitted in his cross-examination that he had not produced anything on record, especially, the pass book, to show that the amount of Rs. 26,000/-

was actually received by Ishwar Ragit, in lieu of the cheque issued by Sheikh Dastgir.

The findings recorded by the appellate Court are findings of fact and do not give rise to any substantial question of law.

Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP